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In The Supreme Court of the United States

OCTOBER TERM 1972

72-116

No. _____

ROBERT B. RAGLAND,

Petitioner,

- vs -

JOHN A. VOLPE, as Secretary of Transportation of the United States, and FRANCIS C. TURNER, as Federal Highway Administrator,

Respondents.

PETITION FOR WRIT OF CERTIORARI

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1. DESIGNATION OF PARTIES

Petitioner -- Robert B. Ragland -- will be called Ragland.

Respondent -- John A. Volpe -- United States Secretary of Transportation -- will be called Volpe.

Respondent -- Francis C. Turner -- will be called Turner.

2. REFERENCE TO OPINIONS

No opinions were delivered in the courts below -- other than a one-paragraph, *per curiam*, unadorned comment by the Court of Appeals, Fifth Circuit, that *Association of Data Processing Service v. Camp* (1970), 397 U.S. 150, and *Barlow v. Collins* (1970), 397 U.S. 159, preclude standing for Ragland.

3. JUDGMENT DATE

The Fifth Circuit's judgment was dated and entered March 30, 1972.

4. REHEARING

Rehearing was denied April 26, 1972.

5. CERTIORARI JURISDICTION

28 U.S.C. 1254 authorizes a Petition for a Writ of Certiorari.

6. QUESTION PRESENTED

Whether Ragland -- a Florida citizen and user of the Interstate System there -- has standing to sue to coerce compliance with the Highway Act's Section 127 on the basis of a showing that his personal safety -- and the public's -- is endangered by Volpe's and Turner's abdication of explicit statutory duty, which is to say; their refusal to cease apportionment of Federal Funds to Florida -- for right-of-way acqui-

sitions per Section 108* -- notwithstanding that Florida permits use of the Interstate System "within . . . (its) boundaries" by "vehicles of weight in excess of . . ." the maxima fixed in Section 127 -- and notwithstanding that Section 127, expressly, provides that "No Funds authorized to be appropriated for any fiscal year under Section 108(b) shall be apportioned to any State within the boundaries of which the Interstate System may lawfully be used by vehicles in excess of . . ." such maxima.

7. STATUTES INVOLVED

The statutes involved are too numerous and space-consuming to be set out here, verbatim -- but are included in the Appendix.

Their citations are: 5 U.S.C. 702; 23 U.S.C. 108; 23 U.S.C. 109; 23 U.S.C. 127; 49 U.S.C. 1651; Florida Statutes, Sections 317.77 and 340.23.

8. DISTRICT COURT JURISDICTION

Jurisdiction in the District Court was invoked under an assortment of statutes, but Ragland has renounced all of them -- except the Administrative Procedure Act aegis. 5 U.S.C. 702.

9. STATEMENT OF THE CASE AND FACTS

Ragland sued to enjoin apportionment of Federal Highway Funds to Florida -- for right-of-way acquisitions -- alleging, *inter alia*:

---

* Also of the Highway Act.

That the Highway Act's Section 127 fixes weight maxima for vehicles using The Interstate System -- and interdicts apportionment of Federal Funds -- authorized by Section 108 -- to a State allowing use of The System "within . . . (its) boundaries" by vehicles weighing in excess of the maxima; (A-25)

That Florida allows use of a 42-mile stretch of The System "within . . . (its) boundaries" by such excess-weight vehicles; (A-26)

That, accordingly, Volpe's and Turner's continued apportionment of Section 108 Funds to Florida convicts them of violating an explicit, substantive, Congressional mandate intended to promote traffic safety; (A-26, 27)

And that -- as a Florida citizen and user of the disputed 42-mile stretch of The System in his State -- Ragland has standing to sue to eliminate the danger posed -- to his personal safety and the public's -- as a consequence of Volpe's and Turner's dereliction. (A-24, 25)

The District Court, Middle District of Florida, Jacksonville Division, dismissed "for failure to state a claim upon which relief can be granted and lack of . . . standing."

The Fifth Circuit affirmed -- as to standing -- laconically citing *Data Processing, supra,* and *Barlow, supra.*

10. ARGUMENT

(a) *Sierra Club Impact*

At the threshold is the *Sierra Club v. Morton*, 40 L.W. 4397, pronouncement on the churned opacity -- called the standing doctrine.*

That pronouncement is propitious for Ragland -- at last putting This Court's imprimatur on "private attorneys general" -- as proper plaintiffs -- in Section 702 actions -- identifying those who may wear that mantle -- and the terms and conditions on which it may be put on.

More particularly, *Sierra Club* holds that - where Section 702 is the jurisdictional predicate -- an allegation of "individualized injury in fact" is not a pleading nicety -- but a substantive requirement -- in order to perfect standing credentials.

Mr. Justice Stewart's opinion emphasized that the majority's purpose was to design a mechanism, accommodating competing judicial policies impacting on standing, viz., the necessity to exclude the torrential flow of litigation into Federal Courts threatened by plaintiffs "who seek to do no more than vindicate their own value preferences" -- while avoiding formulary rigidity which might "insulate executive action from judicial review . . . (and) prevent public interests from being protected through the judicial process."

In sum, *Sierra Club* elucidates on *Data Processing* and *Barlow* "as to what must be alleged by persons who claim

---

* *Sierra Club* supervened the Briefs and Oral Argument in The Fifth Circuit -- but predated -- by one week -- the Ragland affirmation there -- yet was not cited -- suggesting either that its announcement was unknown -- or its holding considered to be irrelevant.

injury of a noneconomic nature to interests that are widely shared" -- and declares:

That a Section 702 plaintiff -- has standing -- and may sue to protect such interests -- if he alleges "facts showing . . . he is himself adversely affected . . . by the agency action sought to be reviewed" -- and --

That having made the talismanic allegation -- establishing standing -- *"the party may assert the interests of the general public in support of his claim for equitable relief."*

(b) *Standing As Defined In Sierra Club, Data Processing and Barlow*

Therefore, *Sierra Club, Data Processing* and *Barlow*, aggregately, make standing, *vel non* -- in a Section 702 suit -- turn on two premises: (1) that the plaintiff allege "individualized injury" -- even though the "injury (is) of a noneconomic nature to interests that are widely shared"; and (2) that such interests are "arguably . . . within the zone of interests to be protected or regulated" by relevant statutes.

(i) *Individualized Injury*

Of course, it may be taken to be axiomatic -- that a bare, naked, conclusory, ceremonial allegation of individualized injury will not survive *Sierra Club* scrutiny.

There must be "a logical . . . nexus between the status and the claim sought to be adjudicated" -- i.e., the plaintiff must "demonstrate the necessary stake . . . in the outcome of the litigation" -- a "logical link between . . . (his) status and the type of legislative enactment" he puts in controversy. *Flast v. Cohen*, 392 U.S. 83, 99.

In context, the nexus postulate means Ragland has to demonstrate a connection between his status -- as a user of the disputed Interstate System fragment -- and Section 127 -- from which it may be inferred -- logically -- that Volpe's and Turner's asserted violation affected him adversely -- individually.

In determining nexus, "it is both appropriate and necessary to look to the substantive issues." *Flast v. Cohen, supra,* p. 99.

Section 108 authorizes Volpe "to make available the funds apportioned to any State for expenditure on any of the Federal Aid Highway Systems, including the Interstate System, for acquisition of rights-of-way, in anticipation of construction and under such rules and regulations as . . . (Volpe) may prescribe:"

> "§108. Advance acquisition of rights-of-way.
>
> (a) For the purpose of facilitating the acquisition of rights-of-way on any of the Federal-aid highway systems, including the Interstate System, in the most expeditious and economical manner, and recognizing that the acquisition of rights-of-way requires lengthy planning and negotiations if it is to be done at a reasonable cost, the Secretary, upon the request of the State highway department, is authorized to make available the funds apportioned to any State for expenditure on any of the Federal-aid highway systems, including the Interstate System, for acquisition of rights-of-way, in anticipation of construction and under such rules and regulations as the Secretary may prescribe. The agreement between the Secretary and the State

highway department for the reimbursement of the cost of such rights-of-way shall provide for the actual construction of a road on such rights-of-way within a period not exceeding seven years following the fiscal year in which such request is made.

(b) Federal participation in the cost of rights-of-way acquired under this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made. Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 893; Pub.L. 86-35, §1, May 29, 1959, 73 Stat. 62."

But §127 forbids apportionment of §108 funds to "any State within the boundaries of which the Interstate System may lawfully be used by vehicles . . . with an overall gross weight in excess of seventy-three thousand two hundred and eighty pounds . . . or *the corresponding maximum weight(s) . . . permitted for vehicles using the public highways of such State under laws or regulations established by appropriate state authority in effect on July 1, 1956, whichever is greater*":

"§127. Vehicle weight and width limitations--Interstate System

No funds authorized to be appropriated for any fiscal year under section 108(b) of the Federal-Aid Highway Act of 1956 shall be apportioned to any State within the boundaries of which the Interstate System may lawfully be used by vehicles with weight in excess of eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an over-all gross weight in excess of seventy-three thousand two hundred and

> eighty pounds, or with a width in excess of ninety-six inches, or the corresponding maximum weights or maximum widths permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof that could be lawfully operated within such state on July 1, 1956. . . ."

On analysis, then, §127 -- to the extent pertinent here -- prohibits Interstate System access to vehicles weighing more than 73,280 pounds -- overall gross -- unless "on July 1, 1956," a State's "laws or regulations" permitted a greater "corresponding maximum weight" -- on its public highways -- in which case access is prohibited to vehicles weighing more than such "corresponding maximum."

And to enforce §127's weight limits, Volpe is mandated to stop the flow of right-of-way funds to "any State" not in compliance.

Focused on Florida, what was §127's impact?

"On July 1, 1956," Florida Statute §317.77 outlawed vehicles -- "on the public highways" -- weighing more than 64,650 pounds.

Automatically, therefore, when §127 became effective, the maximum "overall gross" weight of vehicles -- eligible to use the Interstate System in Florida -- without forfeiture of §108

funds -- was fixed and frozen at 73,280 pounds -- because it was "greater" than the maximum stated in Florida's §317.77.

Nevertheless, on October 2, 1967, the Florida Turnpike Authority -- now abolished with its jurisdiction and powers transferred to the Florida Department of Transportation -- promulgated a regulation permitting use of the Sunshine State Parkway by vehicles having a gross weight of 138,271 pounds.

Section 127 is respectful of Federalism -- and does not presume to fetter the States' determinations of maximum weights and sizes of vehicles -- however astronomical -- using their public highways, generally -- even highways funded, in part, with Federal monies -- except those making up "the Interstate System."

Hence, the October 2, 1967, Regulation -- legalizing titanic Double-Bottom trucks on the Parkway -- would have been blameless and unexceptional vis-a-vis §127 -- *but for the fact a 42-mile segment of the Parkway is incorporated into Interstate-95.*

Such fact, *a fortiori*, condemns the October 2, 1967, regulation -- and requires Volpe to halt §108 funds -- pending action by Florida Highway officials rescinding the regulation -- or deactivating the 42-mile segment as part of I-95.

Telescoped, such was the thrust of the critical, substantive allegations in Ragland's Complaint -- allegations adequate to make out that Volpe and Turner are in conscious violation of Section 127.

However palpable that violation -- does it follow that Ragland has been affected adversely -- personally -- that he has sustained "individualized injury"?

He alleges:

That he is a citizen of Florida and user of The Interstate System segment in dispute; (A-24-25)

That Section 127's purpose is to "protect vehicular travelers from the dangers of the operation of excess . . . weight vehicles on the Interstate System"; (A-27-29)

That Volpe's and Turner"s toleration of Section 127's defiance -- by Florida Highway officials -- *menaces his safety* -- and that of all motorists -- who use The System in Florida; (A-28-29)

That, "a permanent mandatory injunction" should be granted, commanding Volpe and Turner to perform their Section 127 duty "by stopping the apportionment of . . . (Section 108) monies to . . . Florida so long as the State persists in allowing . . . vehicles in excess of . . . 73,280 pounds upon the Interstate System within . . . (its) boundaries." (A-29-30)

In brief, Ragland contends, therefore, that Volpe's and Turner's Section 127 abdication impinges directly and immediately on his status as a Florida citizen and user of The Interstate System -- there -- exposing him to a safety risk of more than trifling magniture.

And the use of a public facility suffices to document "prima facie" the immediacy of harm potential -- which gives credence to an allegation of "individualized injury" -- as illustrated in *Citizens To Preserve Overton Park v. Volpe*, 401 U.S. 402 -- where "No question of standing was raised" -- against an organizational plaintiff whose complaint "alleged *that the organizational plaintiff represented members who were residents of Memphis, Tennessee, who use Overton Park as a park land and recreation area . . .*" See, too, Mr. Justice Stewart's opinion in *Sierra Club, supra.*

And, similarly, *Sierra Club*, expressly, approved The Second Circuit's decision in *Reade v. Ewing*, 205 F.2d 630, allowing standing on the basis of an allegation that: *"Your petitioner and the members of his family are consumers and prospective customers of oleomargarine and the inclusion of harmful ingredients therein will make or . . . may make the oleomargarine unwholesome and detrimental to the health of a human being will adversely affect and harm Petitioner and the members of his family."*

Accordingly, the requisite nexus is shown -- between Ragland's status -- as a user of the disputed 42-mile Interstate System segment -- and the Section 127 violation -- and he has standing -- if traffic safety is an interest included in the "zone of interests protected or regulated" by Section 127 and other relevant statutes.

(ii) *Section 127's Zone of Interests*

What is the Congressional intent animating Section 127 -- what valid, legislative purpose does it express -- what are the interests sought to be "protected or regulated" -- by the prohibition of apportionment of Section 108 Funds to States in non-compliance with the prescribed weight limitations on vehicles operating on The Interstate System?

Two species of interests -- falling within Section 127's "zone of interests" -- are (1) conservation of tax monies by maximizing The System's lifespan and (2) promotion of traffic safety.

Ragland, originally, asserted standing -- as a taxpayer -- to challenge Volpe's and Turner's non-enforcement of Section 127 -- as a waste of public monies.

He soon recognized that *Frothingham v. Mellon*, 262 U.S.

447 -- even as leavened by *Flast v. Cohen, supra* -- foreclosed such a theory -- and abandoned it -- in The District Court -- in favor of reliance, entirely, on his status as a Florida citizen and Interstate System user -- there -- concerned with the preservation of traffic safety -- personal and public -- on the segment open to gigantic vehicles in violation of Section 127.

And, clearly, decisional law -- centerpieced by *Sierra Club's* endorsement of *Reade v. Ewing, supra; Crowther v. Seaborg,* 312 F.Supp. 1205; and *Environmental Defense Fund v. Hardin,* 428 F.2d 1093 -- sanctifies public safety -- variously called public health and/or convenience -- as among the "widely shared noneconomic interests" -- sometimes includible in the "zone of interests" of certain Federal statutes -- and -- thereby -- protectable in a Section 702 action.

And the paramountcy of traffic safety -- as an interest falling within Section 127's "zone of interests" -- is dramatized by study of two other relevant statutes -- 49 U.S.C. 1651 and 23 U.S.C. 109:

Section 1651 established the Department of Transportation and declared that the policy underlying its establishment was to insure *"programs conducive to the provision of fast, safe, efficient and convenient transportation at the lowest cost consistent therewith . . ."*

And Section 109 forbids the Secretary to "approve plans and specifications for proposed projects . . . if they fail to provide for a facility (1) that will adequately meet existing and probable future traffic needs and conditions in a manner conducive to *safety, durability and economy of maintenance."*

Plainly, then, all decisions by the Secretary vis-a-vis the

Federal-Aid Highway Act must take into account the element of traffic safety -- including §127 decisions.

And, equally plainly, Ragland, as a Florida citizen and user of the I-95 segment -- in question -- has standing to sue to enforce Section 127 because his personal safety is imperilled. *Sierra Club v. Morton, supra; Reade v. Ewing, supra; Environmental Defense Fund v. Hardin, supra; Crowther v. Seaborg, supra.*

And having surmounted the standing obstacle, Ragland may act as a private attorney general to protect all motorists using the segment -- i.e., vindicate the public interest:

> "Taken together, *Sanders* and *Scripps-Howard* thus established a dual proposition: the fact of economic injury is what gives a person standing to seek judicial review under the statute, but once review is properly invoked, that person may argue the public interest in support of his claim that the agency has failed to comply with its statutory mandate. It was in the latter sense that the 'standing' of the appellant in *Scripps-Howard* existed only as a 'representative of the public interest.' It is in a similar sense that we have used the phrase 'private attorney general' to describe the function performed by persons upon whom Congress has conferred the right to seek judicial review of agency action." *Sierra Club v. Morton*, 40 L.W. 4397, 4400, 4401.

> "The test of injury in fact goes only to the question and of standing to obtain judicial review. Once this standing is established, the party may assert the interests of the general public in support of his claims for equitable relief." *Sierra Club v. Morton, supra*, p. 4401.

(c) *Jaffe's "Tolerable Compromise" Approach to Standing*

Whether he satisfies the technical rules or not, Ragland's suit implicates a legal question of such moment as warrants exercise of discretion to invest him with standing to test the merits.

More especially, the Complaint alleges -- and the Motion to Dismiss admits -- that Volpe's and Turner's refusal -- to stop the flow of right-of-way funds to Florida -- constitutes a willful and deliberate defiance of the explicit congressional mandate -- embodied in §127.

To deny Ragland standing, then, is to immunize a violation of law -- and tolerate disregard for the will of Congress -- and contempt for the public interest.

Such immunity -- such toleration -- in this suit and others like it -- will deepen the already deep crisis in American political and juridical institutions caused by a "third force" bureaucracy out of control.

Jaffe's vision is "Any citizen can constitutionally be a plaintiff . . . in a public law suit even though he suffers no injury whatever beyond his concern for the public interest" -- but is convinced, nonetheless, that the legal interest test of standing "still has a valid function" -- as a bar to judicial review -- but a court, in its discretion, may disregard the bar -- and "review . . . a legal question if it deems such consideration to be in the public interest":

> "This comment is addressed to the question whether, as has been argued, the requirement of some 'legal' interest is based on misconception or is just plain wrong. I believe that if understood in a limited sense

> the notion still has a valid function. My own view has been and continues to be that *a plaintiff who does not have a 'protected interest' whether as an individual or a group, does not have a right to review, but that a court in its discretion may at the suit of such a person review the legal question if it deems such consideration to be in the public interest.* I am aware that a judicial discretion of this sort has its dangers, but it seems to me to be a *tolerable compromise* between automatic review at the suit of any person . . . and a complete denial of jurisdiction." Louis L. Jaffe, *Standing Again*, 84 Harvard L.Rev. 634-635; see, too, 3 K.C. Davis, *Administrative Law Treatise*, §27.02; *Standing: Taxpayers and Others*, 35 U. of Chicago L. Rev. 601 (1968).

Jaffe's "tolerable compromise" has become a "new direction" in the law of standing, adopted by the D.C. Court of Appeals -- and accepted by This Court. *National Association of Securities Dealers v. Securities and Exchange Commission*, 420 F.2d 83 (1969), reversed on other grounds, 401 U.S. 617.

In brief, the Investment Company Institute (ICI), an association of mutual funds and their advisers and underwriters -- and the National Association of Securities Dealers (NASD), sued the Comptroller of the Currency and First National City Bank "for a declaratory judgment invalidating so much of the Comptroller's regulation 9.12 CFR § 9.18 as permits national banks to operate . . ." a collective investment fund -- a question involving interpretation of the Glass-Steagall Act.

On the merits, the Plaintiffs won in the District Court -- the Defendants in the Court of Appeals -- and the Plaintiffs, again, and finally, in This Court.

But, for present purposes, centrality will be given the standing question.

There were three opinions in the Court of Appeals -- the main opinion, *per curiam*, a concurring opinion by Chief Judge Bazelon and a concurring opinion by Judge Burger (now Chief Justice Burger) joined in by Judge Miller:

Per curiam, the Court commented, "Each appeal raises difficult questions of competitors' standing. *While a majority of the Court has reservations about standing these doubts have been resolved in favor of searching the merits in cases of this consequence.*"

Judge Bazelon's concurring opinion, at the outset, observed the District Court's holding that ICI was an implied -- but unintended -- beneficiary of the Glass-Steagall Act -- and thus possessed of credentials to act as a private attorney-general -- was an "exceptional" holding -- not ratified -- but upheld, nonetheless, by the Circuit Court majority -- because the case, too, was "exceptional":

> "We are all agreed that this holding is exceptional but so is this case. *While the majority concludes from the cases that there is no satisfactory authority for standing,* I find in those cases no reason to deny standing, and good reason to grant it.

Judge Bazelon, then, painstakingly, reviewed and analyzed all the Plaintiff's standing claims -- and approved them all -- confessing, in effect, that they did not satisfy orthodoxy and "rigid abstract rules" of standing -- but, citing Jaffe,* concluded "We are not locked into conventional concepts . . .

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* Jaffe, *Standing to Secure Judicial Review: Private Actions*, 75 Harvard L. Rev. 255, 265-266 (1961).

in assessing . . . interest for purposes of standing" -- but, rather, the "critical question" was whether Congress intended "to immunize rulings of the Comptroller":

> "It is fruitless to look for an intent to protect these businesses from competition from banks in legislation designed to restrict or prohibit bank activities for reasons having nothing to do with competition. The critical question of Congressional intent is this: Did Congress intend to immunize rulings of the Comptroller from Judicial review? This is the critical question because substantial immunity is the consequence of denying standing to . . . (plaintiffs). They are the only parties likely to challenge the authorization of prohibited bank activity. The intended beneficiaries of the banking laws, if the class is narrower than the public, are bank customers who have no immediate and compelling interest in litigation to further long-term sound banking."

In like manner, if Ragland is denied standing the effect of the holding will be to immunize Volpe's and Turner's Section 127 derelictions from judicial review -- which will frustrate Congressional intent -- and despoil the public interest.

Judge Burger's concurring opinion -- for himself and Judge Miller -- declared "Although I am unable to join in *the rationale underlying Judge Bazelon's basis for standing of . . . (plaintiffs) nonetheless I am prepared to agree with the result in order to make a majority holding for review of the merits of a subject of such importance. I do so in order to reach consideration of the merits for such aid as some examination at our level may be useful to further judicial review.*"

In the same vein, he reasoned "*in the uncertain state of*

the law of standing" he could not discern whether plaintiffs' claims to such were adequate -- yet "the *important questions raised*" moved to resolve *"grave doubts" in favor of "judicial review."*

> "Because of the factors discussed heretofore, I am unable to set aside my grave doubts as to . . . (plaintiffs') standing to institute and maintain these suits. However, in the uncertain state of the law of standing, there is something to be said on both sides of that question. I therefore resolve my doubts in favor of the . . . (plaintiffs') and concur in that portion of the foregoing opinion which holds that the (plaintiffs) have standing. I am influenced substantially, as indicated at the outset by the need for judicial examination of the important questions raised."

Avowedly or not, Judge Bazelon's and Burger's opinions, in effect, endorsed Jaffe's recommended doctrinal transvaluation of standing -- to allow suits -- through exercise of judicial discretion -- brought by plaintiffs -- whose personal interests are irrelevant -- to test legal questions, the "size, urgency and clarity" of which implicate the public interest.

More recently, in *Scanwell Laboratories, Inc. v. Shaffer,* 424 F.2d 859 (1970) the D.C. Court of Appeals -- in, perhaps, the most thoroughgoing and scholarly exposition of standing ever written by a Court -- undisguisedly, adopted the "discretionary" approach, saying that where officials are charged with "disregarding . . . (Congress') substantive mandate" -- the Administrative Procedure Act must be read -- more than literally -- in order to give standing to Plaintiffs in "cases in which the public interest demands a hearing on the merits":

> "Standing has been called one of the most amorphous

> concepts in the entire domain of . . . public law . . . The law of standing as developed by the Supreme Court has become an area of incredible complexity . . . Here again is a statement which indicates that the criteria for standing in the federal courts are so amorphous that even judges of the United States Court of Appeal are in doubt as to the guidelines to be followed. *We think it time that such doubts were resolved in favor of having cases heard in which the public interest demands a hearing on the merits* . . . it is clear that with the approach charted in Abbot Laboratories a person aggrieved in fact may properly invoke not only the letter of the Administrative Procedure Act but a broad conception that Congress is hospitable to the maintenance of Complaints against officials charged with disregarding its substantive mandate . . . Of course, the grant of standing must be carefully controlled *by the exercise of judicial discretion* in order that completely frivolous lawsuits be averted . . . However . . . federal judges will be able to discern a case in which there is injury in fact, a sufficient adversary interest to constitute a case or controversy under Article III and otherwise reviewable subject matter to prevent the dockets from becoming overcrowded. The Courts should have discretion to grant standing provided the other criteria are met."

Ragland charges that Volpe and Turner have disregarded Congress' substantive mandate -- embodied in Section 127.

In sum, if it be assumed, arguendo, Ragland "does not have a protected interest" -- and, hence, "does not have a right to judicial review," technically -- nonetheless This Court "in its discretion" may grant review of the "legal question" he raises -- since such consideration" . . . (is) in the public inter-

est." Jaffee, Standing Again, 84 Harvard Law Review 633; *Scanwell Laboratories v. Shaffer, supra; Office of Communication of United Church of Christ v. FCC*, 123 U.S. App. DC 328, 334, 340, 359, F2d 994, 1000-1006; *National Welfare Rights Organization v. Find*, 429 F.2d 725 (C.C.App., D.C., 1970); *Curran v. Laird*, 424 F.2d 122 (C.C.App., D.C., 1970).

The Federal Courts must not be safe harbors for bureaucrats.

They must keep faith with the Madisonian faith -- and act as a "bulwark against every assumption of power in the legislative or executive . . ."

CONCLUSION

Ragland has standing measured by the criteria fixed in *Sierra Club, Data Processing* and *Barlow*.

In all events, whether his credentials conform to the technical standing rules or not, his suit implicates a legal question of such moment as warrants exercise of judicial discretion to authorize him to proceed to a test of the merits.

A Writ of Certiorari should be granted.

Respectfully submitted,

WILLIAM H. MANESS
603 Florida Theatre Building
Jacksonville, Florida 32202

Attorney for Petitioner

PROOF OF SERVICE

I, WILLIAM H. MANESS, attorney for Robert B. Ragland, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of July, A.D., 1972, I served three copies of the foregoing Petition for Certiorari on Honorable John L. Briggs, United States Attorney, P. O. Box 59, Jacksonville, Florida, attorney for Respondents, by mailing said copies in a duly addressed envelope, with postage prepaid, and three copies of said Petition on the Solicitor General, Department of Justice, Washington, D.C. 20530 by mailing said copies in a duly addressed envelope, with Air Mail postage prepaid.

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Attorney

EXHIBIT I

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
FLORIDA. JACKSONVILLE DIVISION

CASE NO. 70-1066 - Civ - J

Filed December 31, 1970

ROBERT B. RAGLAND,

Plaintiff,

-vs-

JOHN A. VOLPE, AS SECRETARY OF TRANSPORTATION, and FRANCIS C. TURNER, AS FEDERAL HIGHWAY ADMINISTRATOR,

Defendants.

COMPLAINT

I. *JURISDICTION*

1. The jurisdiction of this Court is invoked pursuant to the following:

(a) Title 28, U. S. Code, §§ 2201 and 2202; Plaintiff seeks a declaration of his and other citizens' rights under Title 23, U. S. Code, § 127, and further seeks relief pursuant to such declaration.

(b) Title 28, U. S. Code, § 1361; this action is in part in the nature of mandamus to compel an officer of the United States, or an agency thereof, to perform

a duty owed to Plaintiff and other citizens similarly situated.

(c) Title 28, U. S. Code, § 1331 (a); the amount in controversy exceeds the sum of $10,000.00 exclusive of interest and costs, and arises under the Constitution and laws of the United States.

(d) Title 5, U. S. Code, §§ 701-706 inclusive; Plaintiff seeks relief from legal wrongs caused by action of an agency of the United States, and is adversely affected and aggrieved by such action.

2. This action is brought to secure the enforcement of the provisions of Title 23, U. S. Code, § 127, as intended by Congress, for the benefit of Plaintiff and all others similarly situated. Relief by means of a mandatory injunction is sought to compel Defendants to withhold the apportionment of Federal funds for the Interstate Highway System of the State of Florida, as said Title 23, U. S. Code, § 127, directs, since Florida is a State which allows the operation on its Interstate system of vehicles having a gross weight in excess of 73,280 pounds.

II. *PARTIES*

3. Plaintiff is a member of a class of persons too numerous to mention, composed of millions of citizens of the State of Florida, within the meaning of Rule 23, Federal Rules of Civil Procedure. The common interests of said class, which give Plaintiff, and those similarly situated, standing to sue, are the payment of Federal taxes which are used, and apportioned in funding the Interstate System of the State of Florida; the use, or potential use, of the said Interstate System of Florida; and, a direct interest in the enforcement of Title 23, U. S. Code, § 127, enacted by Congress to prevent

the operation on Interstate Systems of vehicles in excess of a weight of 73,280 pounds.

4. Defendant John Volpe is Secretary of Transportation; as such he is charged with overall supervision of the disbursement of funds under the Federal Aid Highway Act as provided by Congress. Defendant Francis C. Turner is Federal Highway Administrator; as such he is directly charged with carrying out the provisions of Title 23, U. S. Code, §127.

III. *FACTS*

5. Title 23, U. S. Code, § 127, provides that no funds shall be apportioned under § 108(b) of the Federal-Aid Highway Act to any state which allows the lawful operation on the Interstate System of vehicles with an over-all gross weight in excess of 73,280 pounds; or the operation on the Interstate System of vehicles in excess of the maximum weight allowed on July 1, 1956, whichever is greater.

6. On July 1, 1956, the following "laws or regulations established by an appropriate State authority," as called for in Title 23, U. S. Code, § 127, existed in the State of Florida:

(a) Florida Statute 317.77, which established a maximum weight limitation "on the public highways within the state" of 64,650 pounds for vehicles, said Turnpike being such a "public highway" within the purview of said Statute.

(b) Florida Statute 340.03, empowering the Florida Turnpike Authority to construct, maintain, and operate the Sunshine State Parkway, a turnpike.

(c) Florida Statute 340.23, authorizing the Florida Turnpike Authority to exclusively regulate said Sunshine State Parkway and providing that insofar as rules

or regulations made by the Turnpike Authority conflicted with vehicle laws of the State of Florida, the rules and regulations made by such Turnpike Authority would control within its jurisdiction.

7. As of July 1, 1956, the Florida State Turnpike Authority had adopted no rules or regulations concerning the weight, length, width, or allowable combinations of vehicles.

8. On December 1, 1956, the Florida Turnpike Authority did adopt rules and regulations concerning the weight and size of vehicles, by incorporating Florida Statutes Chapter 317, allowing a maximum vehicle weight of 64,650 pounds.

9. As of July 1, 1956, there were no laws or regulations in existence in the State of Florida allowing the travel on any highway of any vehicle weighing more than 64,650 pounds.

10. Approximately 42 miles of the Sunshine State Parkway, formerly under the jurisdiction of the Florida Turnpike Authority, now under the jurisdiction of the Florida Department of Transportation, has been designated as part of the Interstate System of Highways.

11. On October 2, 1967, the then Florida Turnpike Authority adopted a resolution authorizing the operation on the Sunshine State Parkway of tandem trailer trucks of a maximum gross weight of 138,271 pounds. The Turnpike Authority has since allowed and the Department of Transportation now allows, the regular use of the Sunshine State Parkway, including that portion which is a part of the Interstate System of Highways, by vehicles weighing up to such maximum gross weight.

12. The State of Florida has continued to receive appropriations of Federal-Aid Highway Funds, despite the opera-

tion on its Interstate System of vehicles of a gross weight in excess of 73,280 pounds, and despite the fact that as of July 1, 1956, there were no laws, rules or regulations in effect in said State allowing the operation of vehicles in excess of such weight on any highway.

13. All of the above facts have been brought to the attention of the Federal Highway Administrator and/or his lawfully appointed agents.

14. Tandem trailer trucks of a gross weight up to 138,271 pounds, are a menace and hazard to normal vehicular traffic in that they are of unusual size and weight, and require more than normal distances in which to build up speed to minimum Interstate standards and in which to decelerate when necessary. Such trucks of such weight cause unusual wear and tear on the highways over which they travel, require a marshalling area at which they must be prepared for travel and impose inordinate expense on Plaintiff, and those similarly situated.

IV. *CAUSE OF ACTION*

15. This cause of action is for a Declaratory Judgment seeking a declaration that the State of Florida is in violation of Title 23, U. S. Code, Section 127 and that the failure of Defendants to enforce the provisions of said Title 23, U. S. Code, § 127, is arbitrary, capricious, unreasonable, and an abuse of authority by way of refusal to perform a mandatory duty specified by Congress without discretion.

16. Defendant Francis C. Turner, Federal Highway Administrator, fails and refuses to withhold the apportionment and payment of Federal monies to the Interstate System of the State of Florida, although said State allows the lawful operation on its Interstate System of vehicles weighing more

than 73,280 pounds, and although said State on July 1, 1956, had no law or rule in effect permitting operation on any of its highways weighing more than 64,650 pounds. Such refusal, and continued disbursement of funds, is a violation of a statute passed by Congress for the protection of all citizens from the hazards and ultimate costs of vehicular traffic of the weights now allowed by the Department of Transportation of the State of Florida. As such, the actions of Defendants amount to a violation of the right of Plaintiff, and all others similarly situated, to enjoy due process of law in the spending of their tax monies, and in the enforcement of Federal laws passed in their behalf. Plaintiff, in behalf of all others similarly situated, seeks to realize the due process of law accorded to him under the Fifth Amendment to the Constitution, and to benefit from the intention of Congress in Passing Title 23, U. S. Code § 123, to protect and preserve him from the menaces of tandem trailer trucks of weights in excess of 73,280 pounds.

V. *CAUSE OF ACTION*

17. This second cause of action is for an Order enjoining the Defendants from making any further apportionments of funds to the State of Florida under the Federal-Aid Highway Act for the Interstate System. Under the facts shown, any such apportionment is in direct violation of Title 23, U. S. Code, § 127, and is arbitrary, capricious, unreasonable, and an abuse of authority in that such action ignores a mandatory duty imposed by Congress, without any discretion being vested in Defendants.

18. Title 23, U. S. Code 127, was passed in 1960 A.D. A reading of this Act results in a clear realization that in the passage of this section, Congress desired to protect vehicular travelers from the dangers of the operation of excess weight

and size vehicles. The State of Florida began to allow the operation of excess weight and size vehicles, namely, tandem-trailer trucks, in 1967. Since that time, despite having this fact made known to him, the Federal Highway Administrator has continued to apportion Federal-Aid Highway monies to the State of Florida. As a result, the clear intent and objective of the law has been thwarted, and the right of Plaintiff and all others similarly situated to enjoy the intended benefits of said law has been denied. Plaintiff, and others too numerous to mention, have been subjected to the dangers of tandem-trailer traffic and have seen their state tax monies expended to build marshalling areas for such tandem trailers and to maintain highways upon which excess wear and tear is inflicted by the same. Only a mandatory injunction, enjoining the Defendants from further apportionment of Interstate funds to the State of Florida, can remedy this situation.

VI. *PRAYER*

WHEREFORE, Plaintiff respectfully prays:

19. That this Court enter a Declaratory Judgment finding that the State of Florida allows the lawful operation upon its Interstate system of vehicles in excess of a gross weight of 73,280 pounds, that on July 1, 1956, no law or rule of said State permitted the lawful operation on any of its highways of vehicles weighing more than 64,680 pounds and that the apportionment to the State of Florida of funds under § 108(b) of the Federal-Aid Highway Act, is unauthorized and illegal, and is in violation of Title 23, U. S. Code, § 127.

20. That this Court enter a permanent mandatory injunction directing that the Defendant Secretary of Transportation and the Defendant Federal Highway Commissioner shall perform the mandatory duties prescribed by Title 23, U. S. Code

§ 127, without exercise of discretion, by stopping the apportionment of Federal-Aid Highway Act monies to the State of Florida so long as the said State persists in allowing the lawful operation of vehicles in excess of a weight of 73,280 pounds upon the Interstate System of Highways within its boundaries.

/s/ WILLIAM H. MANESS
WILLIAM H. MANESS
603 Florida Theatre Building
Jacksonville, Florida
ATTORNEY FOR PLAINTIFF

EXHIBIT II

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. Pub.L. 89-554, Sept. 6, 1966 ,80 Stat. 392.

EXHIBIT III

23 U.S.C. 108

"§ 108. Advance acquisition of rights-of-way

"(a) For the purpose of rights-of-way on any of the Federal-aid highway systems, including the Interstate System, in the most expeditious and economic manner, and recognizing that the acquisition of rights-of-way requires lengthy planning and negotiations if it is to be done at a reasonable cost, the Secretary, upon the request of the State highway department, is authorized to make available the funds apportioned to any State for expenditure on any of the Federal-aid highway systems, including the Interstate System, for acquisition of rights-of-way, in anticipation of construction and under such rules and regulations as the Secretary may prescribe. The agreement between the Secretary and the State highway department for the reimbursement of the cost of such rights-of-way shall provide for the actual construction of a road on such rights-of-way within a period not exceeding seven years following the fiscal year in which such request is made.

"(b) Federal participation in the cost of rights-of-way acquired under this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made. Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 893; Pub.L. 86-35, § 1, May 29, 1959, 73 Stat. 62."

EXHIBIT IV

23 U.S.C. 109

§ 109. Standards

(a) The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State highway departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. The Secretary shall apply such standards uniformly throughout all the States.

(c) Projects on the Federal-aid secondary system in which Federal funds participate shall be constructed according to specifications that will provide all-weather service and permit maintenance at a reasonable cost.

(d) On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State highway department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

(e) No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2 of this title, unless proper safety protective devices complying with safety standards determined by the Secretary at that time as being adequate shall be installed or be in operation at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made.

(f) The Secretary shall not, as a condition precedent to his approval under section 106 of this title, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, butters, ditches, and side slopes, and of sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking. Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 894; Pub. L. 88-157, § 4, Oct. 24, 1963, 77 Stat. 277.

EXHIBIT V

23 U.S.C. 127

§ 127. Vehicle weight and width limitations—Interstate System

No funds authorized to be appropriated for any fiscal year under section 108(b) of the Federal-Aid Highway Act of 1956 shall be apportioned to any State within the boundaries of which the Interstate System may lawfully be used by vehicles with weight in excess of eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an over-all gross weight in excess of seventy-three thousand two hundred and eighty pounds, or with a width in excess of ninety-six inches, or the corresponding maximum weights or maximum widths permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof that could be lawfully operated within such State on July 1, 1956. With respect to the State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956. Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub.L. 86-624, § 17(e), July 12, 1960, 74 Stat. 416.

EXHIBIT VI

49 U.S.C. 1651

§ 1651. Congressional declaration of purpose

(a) The Congress hereby declares that the general welfare, the economic growth and stability of the Nation and its security require the development of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources.

(b) (1) The Congress therefore finds that the establishment of a Department of Transportation is necessary in the public interest and to assure the coordinated, effective administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible; to encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties toward the achievement of national transportation objectives; to stimulate technological advances in transportation; to provide general leadership in the identification and solution of transportation problems; and to develop and recommend to the President and the Congress for approval national transportation policies and programs to accomplish these objectives with full appropriate consideration of the needs of the public, users, carriers, industry, labor, and the national defense.

(2) It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. Pub.L. 89-670, § 2, Oct. 15, 1966, 80 Stat. 931.

EXHIBIT VII

Section 317.77, Florida Statutes of 1955

317.77 Maximum weights.—

(1) The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed twenty thousand pounds.

(2) For the purpose of §§317.73-317.95, an axle load shall be defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(3) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth herein, the total weight with load imposed upon the highway by all the axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the vehicle or combination of vehicles, measured longitudinally to the nearest foot as set forth in the following table:

Distance in feet between first and last axles of vehicle or combination of vehicles.	Maximum load in pounds on all the axles.
4	32,000
5	32,000
6	32,000
7	32,000
8	32,610
9	33,580

10	34,550
11	35,510
12	36,470
13	37,420
14	38,360
15	39,300
16	40,230
17	41,160
18	42,080
19	42,990
20	43,900
21	44,800
22	45,700
23	46,590
24	47,470
25	48,350
26	49,220
27	50,090
28	50,950
29	51,800
30	52,650
31	53,490
32	54,330
34	55,980
35	56,800
36	57,610
37	58,420
38	59,220
39	60,010
40	60,800
41	61,580
42	62,360
43	63,130
44	63,890
45	64,650

Except as hereinbefore provided, no vehicle or combination of vehicles exceeding the gross weights specified above shall be permitted to travel on the public highways within the state.

EXHIBIT VIII

Section 340.23, Florida Statutes

"340.23 Traffic control

"(1) The authority is hereby authorized to adopt and promulgate rules and regulations with respect to the use of a project, which rules and regulations shall relate to vehicular speeds, loads and sizes, safety devices, rules of the road and such other matters, including but not limited to the failure or refusal to pay the toll provided for the use of a project, as may be necessary and proper to regulate traffic in the interest of safety, the maximum convenience of the persons using the project, preservation of a project from unwarranted damage and to carry out the purpose of this chapter. Such rules and regulations, shall apply according to their terms to all sections of a project under the jurisdiction of the authority, their feeder roads and structures and other appurtenances. *In so far as such rules and regulations may be inconsistent with the provisions of the vehicle and traffic laws of this state, such rules and regulations shall be controlling.* * * *"

(Emp. Supp.)